



CENTER FOR
FOOD SAFETY

March 9, 2018

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

SUBMITTED VIA ONLINE FOIA SUBMISSION FORM

RE: Freedom of Information Act Request

To the United States Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) national non-profit public interest and environmental advocacy organization working to protect human health and the environment by curbing the use of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. CFS also educates consumers concerning the impacts of genetic engineering (GE) on the environment including biotech experiments involving GE insects. Consistent with this mission and pursuant to 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552, CFS respectfully request the following information:

- 1. Any and all documents from December 1, 2016 to the present concerning EPA's consideration of Oxitec's GE mosquito OX5138 as a biopesticide product including: (A) any and all documents related to Oxitec's application for a Section 3 commercial approval filing based on field trials of Oxitec's GE mosquito, and (B) any and all documents related to Oxitec's application for an experimental use permit to begin field trials in the Florida Keys and Houston, Texas.**
- 2. Any and all documents from December 1, 2016 to the present concerning communications between Oxitec and the EPA Office of Pesticide Programs and the Office of Chemical Safety and Pollution Prevention, specifically communications between Oxitec and EPA employees Chris Wozniak, Charlotte Bertrand, Nancy Beck, and Robert McNally.**
- 3. Any and all documents from December 1, 2016 to the present concerning communications between the EPA and the Food and Drug Administration (FDA) regarding Oxitec's GE mosquitos.**

"All documents" includes but is not limited to all correspondence, minutes, memoranda, communications and/or other documents received from or given to other agencies, maps, plans,

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drawings, emails, reports, databases, and phone notes. This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

REQUEST FOR FEE-WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”) Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. THE PRESENT DISCLOSURE IS IN THE PUBLIC INTEREST BECAUSE IT WILL SIGNIFICANTLY CONTRIBUTE TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES OF GOVERNMENT.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

A. The subject of the disclosure concerns “the operations and activities of the government.”

The requested information pertains to correspondence regarding the development and testing of GE mosquitoes between EPA, other federal agencies, and the developers of GE mosquitos. Specifically, the information relates to the regulation of their development, testing and potential environmental, animal, and human health impacts. In particular, the requested information involves EPA’s decisions regarding approvals and permitting. It is irrefutable that these actions are clearly identifiable operations of government. This disclosure will demonstrate to the public at large the nature of EPA’s decision-making in regards to regulating biologically-based pesticides and emerging technologies.

B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.

As discussed in the previous section, the present disclosure will provide the public a better understanding of the nature of EPA’s regulation of biologically-based pesticides and emerging technologies. The requested documents and communications are not already public, and will help concerned members of the public better understand the development, testing, release, regulation, and potential environmental, animal and human health impacts of GE mosquitoes, and demonstrate to the public at large EPA’s analytic process, conclusions, and generally held knowledge concerning GE mosquitoes.

CFS is a nonprofit, public interest organization that empowers people, supports farmers, and protects the environment from the harms of industrial food production. CFS works to promote comprehensive and rigorous analysis of GE insects under flagship U.S. health and environmental laws. With over 900,000 farmer and consumer supporters nationwide, CFS informs, educates, and counsels the public—via legal action, publicity campaigns, our website, our True Food Network, books and reports, and our quarterly newsletter (Food Safety Now!) about the harm done to human health, animal welfare, and the environment by industrial agriculture. Through nearly two decades of involvement in technical analysis, environmental litigation, and policymaking as it relates to food and environmental impacts, CFS has demonstrated its ability to take technical information provided by government agencies and distill it into a format that is accessible to the public. CFS puts out reports on a variety of topics, including genetically engineered foods, aquaculture, pesticides, food and feed additives, organic standards, and other topics that tend to be difficult for the layperson to understand without professional assistance. Accordingly, CFS is an effective vehicle to disseminate information on EPA’s oversight of the development and release of GE mosquitoes in the United States.

Simultaneously, this FOIA will help CFS fulfill its well established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which FOIA stands.

II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO THE CENTER.

The Center for Food Safety is a 501(c)(3) non-profit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from the EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of industrial agriculture and the emergence of GE biologically-

based pesticides. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA.

Based upon the foregoing, CFS requests that this FOIA be classified within the EPA's fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact me to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to FOIA@centerforfoodsafety.org. Electronic materials are preferred but if records must be mailed, please send to the San Francisco address on the letterhead. Please call me at 415-826-2770 or email me at ksmith@centerforfoodsafety.org if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

/s/ Kellan Smith

Kellan Smith

Legal Fellow

Center for Food Safety

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